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FILED
DISTRICT COURT OF GUAM

APR 18 2008

JEANNE G. QUINATA
Clerk of Court

6
7 **IN THE UNITED STATES DISTRICT COURT**
8 **TERRITORY OF GUAM**

9 UNITED STATES OF AMERICA,

10 vs.

11 IN HYUK KIM aka DOMINIC,

12 Defendant.

CRIMINAL CASE NO. CR07-00064

**MOTION TO EXCLUDE GOVERNMENT
EXHIBITS**

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15 **INTRODUCTION**

16 Defendant, IN HYUK KIM, by and through counsel, LUJAN AGUIGUI & PEREZ LLP,
17 moves to exclude from the trial of this matter the transcripts referenced in **Exhibit A**. These
18 purport to be transcripts of recordings translated from the Korean language to the English
19 language. The transcripts should be excluded because they are inadmissible hearsay, they were
20 not prepared by a qualified interpreter, they have not been properly authenticated, they have not
21 been certified as accurate translations, and they are unreliable, rough translations.
22

23
24 **FACTS**

25 Upon information and belief, the Government intends to present transcripts of recordings
26 purportedly translated from the Korean language to the English language. These transcripts are
27 referenced in **Exhibit A** and are also identified in the Government's Exhibits as Exhibits 2, 3, 4,
28

1 5, 18, 20, 21, 22, 24, and, 25. Each of the transcripts appears to have been translated by Iju Kim
2 Michigami. This translator's name does not appear on the United States District Court of Guam
3 list of approved translators. See **Exhibit B**. Michigami has not been qualified as an expert. The
4 transcripts have not been certified under oath as true or accurate translations.

5
6 At the motions hearing on February 11, 2008, the defense objected to the transcripts,
7 asserting:

8 Objection; no foundation has been laid to establish that the translation
9 from Korean to English was done accurately or by a court certified
10 translator, court approved certified translator. In further support of my
11 objection, I would note that with respect to another transcript which I
12 anticipate will be submitted regarding a meeting between Mr. Kim and
13 the informant, that the agent report indicates that it was only a rough
14 translation – from Korean to English, and therefore is unreliable.
15 (**Exhibit C.1, 13: 1-11**).

16 The Government responded:

17 This is not a trial, it's a motion to suppress. What we're concerned
18 with now is not the accuracy of what was said so much as who said it
19 and when they said it, that is to say, it's a statement of a co-
20 conspirator. If we were to go to trial, of course, we'll have an
21 interpreter who will say whether or not every word is correct. Right
22 now, we're identifying the nature of the document for purposes of
23 counsel's motion to suppress, and the accuracy of the translation was
24 not part of his motion. (**Exhibit C.2, 13:13-22**).

25 Subsequent to the motions hearings, the Government has not had the originally submitted
26 transcripts re-translated. Instead, upon information and belief, the transcripts have only been
27 cleaned up for appearance but their content remains the same.

28 During the motions hearing Agent John Duenas testified that he did not know who
translated the transcripts from Korean to English. He also testified that he did not know whether
or not the translations were accurate. (C.3, 71:14-24).

In the Report of Investigation dated 2/12/07, the Report states that the recorded
conversation between the informant and Kim was only "roughly translated from Korean into
English." **Exhibit D**, page 4, paragraph 9.

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2 **ARGUMENT**

3 The transcripts of recorded conversations purportedly translated by Michigami from
4 Korean to English should be excluded from trial because: (a) Michigami has not been qualified as
5 an expert; (b) has not been certified as translator; (c) is not a court-approved or court-certified
6 translator; (d) has not certified under oath the accuracy of the translations; (e) no foundation has
7 been laid for their admissibility; (f) they have not been authenticated; (g) they are unreliable,
8 rough translations.

9 The Federal Rules of Evidence, Rule 604 provides, "An interpreter is subject to the
10 provisions of these rules relating to qualification as an expert and the administration of an oath or
11 affirmation to make a true translation." Documentary evidence is admissible if authenticated "by
12 evidence sufficient to support a finding that the matter in question is what its proponent claims."
13 Federal Rules of Evidence, Rule 901(a). Written translations are subject to this authentication
14 requirement. *United States v. Nouria*, 2006WL 2417245 (E.D.N.Y. Aug.21, 2006). Therefore,
15 "witness testimony translated from a foreign language must be properly authenticated and any
16 interpretation must be shown to be an accurate translation done by a competent translator." *Jack*
17 *v. Trans World Airlines, Inc.*, 854 F.Supp 654, 659 (N.D.Cal.1994).
18
19

20 Applying the law stated to the instant facts, the transcripts should be excluded from the
21 trial of this matter.

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1 **CONCLUSION**

2 For the reasons stated and on the basis of such further evidence and argument which may
3 be presented, the transcripts of recordings of conversations purportedly translated from Korean to
4 English should be excluded from the trial of this matter.

5 Dated this 18th day of April, 2008.

6 **LUJAN AGUIGUI & PEREZ LLP**

7
8 By:



9 **PETER C. PEREZ, ESQ.**

10 *Attorneys for Defendant In Hyuk Kim aka Dominic*

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EXHIBIT A

Audio Recordings and Transcripts

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EXHIBIT B



Magistrate J. T. Kilgore
Case Manager
District Court of Guam
Phone: (671) 473-9141
Fax: (671) 473-9152
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2008 DISTRICT COURT INTERPRETERS

Interpreter Name	Language	Contract Status	Contact Information	
Jane Hua	Vietnamese	current	727-3304	
Julia Berg	Mandarin	current	777-1180	649-1213
Primo Caburian	Tagalog	current	692-2055	477-9164
Tamilo S. Clark	Japanese	current	648-1960	688-6300
Tatasy Curley	Chukeese	current	734-9050	472-3331
Jennifer Kang	Korean	current	689-2424	
Hee Jung Won	Korean	current	472-0667	
Sung Woo Yoon (Victor)	Korean	current	688-0933	
Krishnan Seerengan	Tamil	current	632-0849	482-0849

EXHIBIT C.1

1 MR. PEREZ: Yes, Your Honor. Objection; no
2 foundation has been laid to establish that the
3 translation from Korean to English was done accurately
4 or by a court certified translator, court approved
5 certified translator. In further support of my
6 objection, I would note that with respect to another
7 transcript which I anticipate will be submitted
8 regarding a meeting between Mr. Kim and the informant,
9 that the agent report indicates that it was only a
10 rough translation from English -- from Korean to
11 English, and therefore is unreliable.

12 THE COURT: Okay, Ms. Johnson?

13 MS. JOHNSON: This is not a trial, it's a
14 motion to suppress. What we're concerned with now is
15 not the accuracy of what was said so much as who said
16 it and when they said it, that is to say, it's a
17 statement of a co-conspirator. If we were to go to
18 trial, of course we'll have an interpreter who will say
19 whether or not every word is correct. Right now we're
20 identifying the nature of the document for purposes of
21 counsel's motion to suppress, and the accuracy of the
22 translations was not part of his motion.

23 THE COURT: All right.

24 MR. PEREZ: Your Honor, in terms of where the
25 government was going in opposition, they have not

Wanda M. Miles, Official Court Reporter
District Court of Guam

EXHIBIT C.2

1 Q. And you didn't hear what they discussed, if
2 anything, in the car?

3 A. That's correct.

4 Q. Okay. And in terms of orchestrating meetings,
5 I mean, you're not saying that -- that law enforcement
6 did not orchestrate the various meetings between the
7 informant and Bosley, are you?

8 A. Well, we, we orchestrated it, we planned it,
9 we helped them plan it, and we actually told him what
10 we needed to substantiate during this meeting.

11 Q. And you also orchestrated the meeting between
12 the informant and Kim; correct?

13 A. Yes.

14 Q. The transcripts that were referred to in this
15 hearing earlier, I believe it was Exhibit 1, 2, 3, you
16 know what I'm talking about, right?

17 A. Yes.

18 Q. You don't know who translated those
19 transcripts from Korean into English, correct?

20 A. That's correct.

21 Q. And you can't say with certainty that those
22 translations are true and accurate, correct?

23 A. I know they're true. Whether they're
24 accurate, I don't know.

25 Q. Okay. Well, you don't speak Korean, correct?

EXHIBIT D

DEPARTMENT OF HOMELAND SECURITY
ICE

PAGE 4

REPORT OF INVESTIGATION
CONTINUATION

CASE NUMBER GM16CR06GM0005

REPORT NUMBER: 004

Force Agents (TFA) Barbara Tayama and Erwin Fejeran established surveillance at King's Restaurant in Harmon at about 5:45 pm. The CD parked in front of the restaurant, entered and waited for DOMINIC to arrive.

6. At about 6:07 pm, TFA Tayama and agent Kibota observed a man, later confirmed as DOMINIC, arrive in a green Toyota 4Runner license #MTE2346 and wearing beige shorts and a light blue short sleeve shirt. DOMINIC parked in front of King's and entered the restaurant. At about 6:09 pm, as observed by TFA Fejeran, DOMINIC joined the waiting CD in the restaurant and began a conversation in Korean.

7. The meeting concluded at about 7:00 pm. Surveilling agents followed DOMINIC as he left the restaurant and drove to Harmon Villa Gardens Apartments in Harmon. A few minutes later, agents Tayama and Kibota saw DOMINIC walking to his car with 2 water bottles. Agents Tayama and Kibota followed DOMINIC to the vicinity of Micronesia Mall where they temporarily lost site of him for about 10 minutes and then saw the 4Runner drive into the parking garage at Micronesia Mall at which time surveillance was terminated.

8. After the meeting with DOMINIC, the CD met agents Fejeran and Robertson in a deserted parking lot where they retrieved the covert recording and transmitting equipment. The CD also surrendered the passport photocopies that were displayed to Dominic during the meeting. The CD advised that the meeting went well and that DOMINIC acknowledged previously receiving the passport photocopies and the money from BOSLEY for the first three I-94s but not the \$400.00 given to Bosley to secure DOMINIC's assistance in facilitating the departure from Guam of one of the "notional" Korean females. The CD said that during the conversation, DOMINIC claimed that he used to operate by himself but was caught by an unspecified Immigration officer who noticed that DOMINIC was not turning in properly stamped I-94s. As told to the CD by DOMINIC, that Immigration officer agreed to show DOMINIC how to turn in fraudulent I-94s without getting caught. In exchange, DOMINIC paid the Immigration Officer \$300.00 for each I-94 that was fraudulently turned in to CBP.

9. The recorded conversation between the CD and DOMINIC was roughly translated from Korean into English and a copy of the transcript is in the case file. A review of the transcript and the covert video shows the following:

a. The CD and DOMINIC discussed the Guam Visa Waiver program and how extension of the authorized length of stay for Korean tourists from 15 days to 3 months would affect the (illegal) employment of Korean females in clubs and bars in Guam. DOMINIC's comments on this topic along with his reference to "15 day" girls demonstrates his familiarity with the issue of Korean females coming to Guam as tourists and illegally working in clubs and overstaying their authorized 15 in Guam for the specific purpose of continuing

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